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Real Estate Excise Tax

RAP  
STATE OF NORTH CAROLINA

P.I.N. # 7190-039-2793

COUNTY OF YANCEY

PREPARED BY Thomas D. Henry  
& Assistant Attorney General  
RETURN TO: North Carolina Department of Justice  
Transportation Section  
1505 Mail Service Center  
Raleigh, North Carolina 27699-1505

**CONSERVATION EASEMENT AND  
EASEMENT OF INGRESS AND EGRESS  
IN PERPETUITY**

This Conservation Easement and Easement of Ingress and Egress in Perpetuity ("Conservation Easement") is granted on this \_\_\_\_ day of \_\_\_\_\_, 2014 by **WILLIAM R. BOYER and wife NADINE E. BOYER**, having an address of 978 Dam Road, Burnsville, North Carolina 28714 ("Grantor"), to the **NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**, its successors and assigns, having an address of 1598 Mail Service Center, Raleigh, North Carolina 27699-1598 ("NCDOT").

The designation Grantor and NCDOT (collectively, the "Parties") as used herein shall include said Parties, their heirs, successors, assigns, respective agents, executors, administrators, grantees, devisees, licensees, and/or all other successors as their interests may appear, and shall include singular, plural, masculine, feminine or neuter as required by context.

**WHEREAS:**

Grantor is the sole owner in fee simple of certain real property lying and being in Prices Creek Township, Yancey County, North Carolina, consisting of approximately 15.645 acres as more particularly described in a deed recorded in Deed Book 527, Page 297 of the Yancey County Registry (the "Property").

The Property possesses natural, wetland, scenic, open space, educational, and/or recreational values of great importance to NCDOT, Grantor, and the people of North Carolina.

Grantor is willing to grant to NCDOT a perpetual conservation easement over a portion of the Property consisting of approximately 0.563 acres (the "Conservation Easement Area"), thereby restricting and limiting the use of lands and waters within the Conservation Easement Area to the terms and conditions and for the conservation purposes and values hereinafter set forth.

NCDOT is an agency of the State of North Carolina that has the authority to construct transportation projects for public use and to acquire land and interests in land for the purpose of mitigating the environmental impacts of these transportation projects.

Grantor may hold and maintain open land in its natural state, subject to the terms and conditions set forth herein.

The purposes of the Conservation Easement are to preserve, enhance, restore, and/or maintain the natural features, streams and associated streamside wetlands, and other resources of the Conservation Easement Area consistent with the dictates of Federal and State agencies pursuant to permits from said agencies necessary for NCDOT projects; to provide habitat for native land, air, and aquatic flora and fauna; to improve and maintain water quality; to control runoff of sediment; to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; to protect the mitigation activities performed by NCDOT within the Conservation Easement Area; and to maintain permanently the dominant woodland, estuarine, scenic, and natural character of the Conservation Easement Area designated on the Property as hereinafter described (the purposes enumerated in this paragraph are collectively referred to as the "conservation values").

NCDOT and Grantor recognize the conservation values of the Conservation Easement Area and have the common goal of the perpetual conservation and protection of it. Grantor intends for the conservation values of the Conservation Easement Area to be preserved and maintained. Further, Grantor intends to convey to NCDOT the right to enforce the preservation and protection of the conservation values of the Conservation Easement Area in perpetuity.

The conservation values and purposes of this Conservation Easement are recognized by the Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use," N.C.G.S. § 121-35(1); and which provides for

tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement," N.C.G.S. § 121-40.

This Conservation Easement is subject to any and all permits issued by Federal and/or State resource agencies associated with **NCDOT TIP Project Nos. R-2518A, R-2518B, R-2519A, R-2519B**. The preservation of the Conservation Easement Area is a condition of a Biological Opinion issued in connection with the above-referenced NCDOT TIP Projects by the U.S. Fish and Wildlife Service on March 14, 2008. A copy of the Biological Opinion is on file with NCDOT.

**NOW, THEREFORE**, in consideration of the sum of **FIVE THOUSAND SIX HUNDRED AND FIFTY DOLLARS AND NO CENTS (\$5650.00)** and for other good and valuable considerations to Grantor, and in further consideration of the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys unto NCDOT and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, situated over, upon, and across the Conservation Easement Area, in Yancey County, North Carolina, as described more particularly in **Exhibit A**. (Exhibit A is attached hereto and is specifically incorporated by reference as if the same were fully set forth herein.)

The terms, conditions and restrictions of the Conservation Easement and Permanent Access Easement are as hereinafter set forth:

#### **1. Grant Of Conservation Easement**

Grantor hereby voluntarily grants and conveys to NCDOT, and NCDOT hereby voluntarily accepts, a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein.

Grantor agrees that it will not perform, nor willingly or knowingly allow others to perform, any act on, within, or affecting the Conservation Easement Area that is inconsistent with the covenants herein. Grantor authorizes NCDOT to enforce these covenants in the manner described below.

Grantor hereby voluntarily grants and conveys to NCDOT all development rights for the Conservation Easement Area, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Conservation Easement Area. The Parties agree that the development rights in the Conservation Easement Area are terminated and extinguished, and may not be used on or transmitted to the subject Property, as it is now described or as the Property may be described in the future, or to any other property.

#### **2. Perpetual Duration**

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by NCDOT against Grantor. Every provision of this Conservation Easement that applies to Grantor or NCDOT shall also apply to their respective agents, heirs,

executors, administrators, assigns, grantees, devisees, licensees, and/or all other successors as their interests may appear. This Conservation Easement is enforceable regardless of any subdivision, partition, or conveyance of the Property or any portion thereof.

### 3. Access

NCDOT and its authorized representatives, at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area for the purpose of undertaking activities to protect, restore, manage, maintain, and/or enhance the conservation values of the Conservation Easement Area, and for the purpose of inspecting the Conservation Easement Area to determine if Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. Grantor may do nothing that would interfere with NCDOT's access to the Conservation Easement Area. NCDOT will notify Grantor by phone, email, or other correspondence before entering the Property for the purpose of determining compliance. However, if NCDOT, in its sole discretion, determines that circumstances require immediate entry, NCDOT is not required to notify Grantor prior to entry but will notify Grantor within two business days of such entry. NCDOT and its authorized representatives shall have access to the Conservation Easement Area via the public right-of-way known as SR 1114 (Dam Road).

### 4. Rights And Responsibilities Retained By Grantor

Subject to the terms and restrictions contained herein, Grantor reserves to and for itself and its successors the customary rights and privileges of ownership, including, but not limited to, the right to quiet enjoyment of the Conservation Easement Area; the right of ingress and egress to the Conservation Easement Area and any adjacent property of Grantor; the right to continue such uses as exist as of the date of this grant not inconsistent with the Conservation Easement; and the right to sell, lease, encumber, transfer, gift, impose restrictions on, or otherwise convey the Conservation Easement Area in its entirety, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to NCDOT pursuant to Paragraph 17; together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the conservation values and purposes of this Conservation Easement. Unless otherwise specified herein, nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God. Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Conservation Easement Area imposed by law.

Prior to performing any maintenance or construction in the Conservation Easement Area, Grantor shall submit a written plan to **NCDOT - Natural Environment Section** detailing the proposed maintenance or construction activities. Grantor shall not perform any maintenance or construction activities in the Conservation Easement Area whatsoever until Grantor receives written approval of the submitted plan from NCDOT.

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conservation Easement Area. This Conservation Easement does not create any rights of the public in, on, or to the Conservation Easement Area, although the public

has the right to view the Conservation Easement Area from any adjacent publicly accessible areas.

## 5. Subdivision

For purposes of this Conservation Easement, the Conservation Easement Area is to be considered one integral, indivisible entity. The Conservation Easement Area may not be subdivided, partitioned, or otherwise divided. The Conservation Easement Area may not be conveyed from the Property except in its current configuration as described herein and as a unitary entity or block of the Property. The intent of this provision is to ensure that the Conservation Easement Area exists and remains in perpetuity as an integral whole, the fee of which is under single ownership.

## 6. Permitted And Restricted Activities

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the conservation values and purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible or permitted activity herein, or unless NCDOT has provided express written permission to Grantor (see Paragraph 4), any use of, or activity in, the Conservation Easement Area by Grantor is prohibited as inconsistent with the conservation values and purposes of this Conservation Easement. However, Grantor retains the right to engage in passive recreational uses of the Conservation Easement Area (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, but not limited to, walking, fishing, hunting or animal and plant observation as long as such activity is consistent with the conservation values and purposes of this Conservation Easement. The Conservation Easement Area shall be maintained in its natural, scenic, and open condition and restricted from any activity that would impair or interfere with the conservation values of the Conservation Easement Area. Any use or activity that causes or is likely to cause soil degradation, erosion, and/or pollution of any surface or sub-surface waters is prohibited.

Any rights not expressly reserved hereunder by Grantor have been acquired by NCDOT.

Without limiting the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

### A. *Disturbance of Natural Features*

Any change, disturbance, alteration, or impairment of the natural, scenic, or aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited unless NCDOT shall provide express prior written consent or unless otherwise expressly permitted herein. (See Paragraph 4.)

### B. *Agricultural, Grazing, Horticultural Use and Fencing*

Agricultural, grazing and horticultural uses, including landscaping, of the Conservation Easement Area are prohibited. No herbicides, insecticides, fungicides, fertilizers or other

potentially harmful substances may be used in the Conservation Easement Area without advance written permission from NCDOT. However, Grantor is authorized to remove non-native species by hand and to use spot application of herbicides or pesticides to remove non-native species without advance written permission. No agricultural products or by-products may be dumped, stored, or disposed of within the Conservation Easement Area or at any place on the Property outside the Conservation Easement Area where such disposal might result in or cause discharge or runoff directly into the Conservation Easement Area.

Existing fences may be repaired and replaced by Grantor. NCDOT or its representatives may install fencing around the perimeter of the Conservation Easement Area. Grantor shall not damage, nor knowingly allow others to damage, any fencing installed by NCDOT.

### ***C. Silvicultural Use and Land Clearing***

There shall be no destruction or cutting of trees or plants in the Conservation Easement Area, except upon written approval of NCDOT. (See Paragraph 4.) The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with the conservation values and purposes of this Conservation Easement.

Removal of large live trees, thinning of the forest, or removal of brush for fire management may be allowed in the Conservation Easement Area in some cases provided that any such request is (i) consistent with the conservation values and purposes of this Conservation Easement; and (ii) Grantor obtains prior written approval from NCDOT before undertaking any of these activities. (See Paragraph 4.) However, Grantor may remove fallen, damaged, hazardous, or dangerous trees (e.g., hanging limbs, split trees, leaning trees, dead trees, trees damaged by ice, wind, or snow, trees struck by lightning, and other hazardous conditions) if, in the discretion of Grantor, such trees pose a safety or maintenance issue within the Conservation Easement Area.

Destruction, cutting, mowing, or harming any vegetation on the Conservation Easement Area, except for management activities designed to benefit the Conservation Easement Area as a wetland, wildlife management area, or for the benefit of endangered species, as approved in writing by NCDOT, is prohibited. (See Paragraph 4.)

### ***D. Dumping or Storage***

Dumping, disposal, or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, hazardous substances, toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials within the Conservation Easement Area is prohibited, with the exception of trash and/or recycling receptacles, whose type and location shall be expressly approved in writing by NCDOT. (See Paragraph 4.)

No agricultural products, by-products, or agricultural equipment may be dumped, stored, or disposed of within the Conservation Easement Area or within 100 feet in any direction of any

pond, stream, tributary, lake, watercourse, spring, seep, or wetlands on the Property. Grantor shall be responsible for removing any and all material dumped, stored, and/or disposed of within the Conservation Easement Area.

***E. Mineral Use, Excavation, and Dredging***

There shall be no filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, sod, minerals, or other materials; no exploration for, or development and/or extraction of rocks, minerals, precious metals, ores, gemstones, or hydrocarbons by any method; and/or no change in the topography of the land in any manner within the Conservation Easement Area, or on adjacent property if owned by Grantor or his successors, which would cause erosion, siltation, or turbidity changes within the Conservation Easement Area.

***F. Industrial Use***

Industrial activities within the Conservation Easement Area are prohibited.

***G. Residential Use***

Residential use of the Conservation Easement Area is prohibited.

***H. Commercial Use***

Commercial activities within the Conservation Easement Area are prohibited.

***I. Construction, Roads and Road Building, Motorized Vehicles***

There shall be no building, shed, facility, mobile home, antenna, utility pole, or any temporary or permanent structure, facility, or fixture constructed or placed within the Conservation Easement Area unless specifically set forth in this Conservation Easement.

No new roads, either paved or unpaved, may be constructed in the Conservation Easement Area except as allowed below. NCDOT expressly reserves the right to install unpaved roads or footpaths within the Conservation Easement Area. NCDOT further reserves the right to operate and maintain structures or unpaved roads, and to use motorized vehicles in any manner necessary, for the purpose of reestablishing, protecting, and enhancing the conservation values of the Conservation Easement Area.

***J. Signs***

No signs, billboards or advertisements shall be permitted within the Conservation Easement Area except: (i) interpretive signs describing conservation activities and the conservation values of the Conservation Easement Area and/or Property; (ii) signs identifying the owner of the Property and the holder of the Conservation Easement; (iii) signs prescribing rules and regulations for the use of the Conservation Easement Area and/or Property, which shall specifically include "No Trespassing," "No Hunting," and "Posted" signs, if applicable; (iv)

signs used to mark trails or identify directions, locations, or otherwise aiding navigation within the Conservation Easement Area and/or Property; and (v) educational signs. Should Grantor wish to install any other signs, Grantor shall submit a written plan to **NCDOT (Natural Environment Section)** detailing the proposed signage installation activities. (See Paragraph 4.) Grantor shall not perform any signage installation activities in the Conservation Easement Area whatsoever until Grantor receives express written approval of the submitted plan from NCDOT.

***K. Utilities***

The installation of utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited. If there are existing utility easements located within the Conservation Easement Area or affecting the Conservation Easement Area, Grantor shall notify NCDOT if right-of-way clearing or other work within or affecting the Conservation Easement Area is planned or scheduled by any utility. (See Paragraph 17.) Any such clearing should be minimized to the extent practicable and performed in a manner consistent with the principles of permanently protecting the conservation values of the Conservation Easement Area.

***L. Water Quality and Drainage Patterns***

Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water quality or to any of the plants, animals, or habitats within the Conservation Easement Area, or that would alter natural water levels, drainage, sedimentation, turbidity, and/or flow in or over the Conservation Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetlands, ponds, watercourses, tributaries, lakes or streams by Grantor is prohibited. In addition, Grantor is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within, or out of the Conservation Easement Area by any means; polluting or discharging into waters, springs, seeps, ponds, watercourses, streams, tributaries, lakes, or wetlands; or using pesticides or biocides in the Conservation Easement Area, unless NCDOT has provided express written permission to Grantor authorizing such uses. (See Paragraph 4.)

***M. Development Rights***

No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise.

***N. Hunting and Fishing***

Grantor expressly reserves the right to hunt and fish within the Conservation Easement Area and to control access of all persons for the purpose of hunting and fishing in the Conservation Easement Area; provided that these activities do not impact the protection and conservation of any animal, plant, or aquatic habitat or any other of the conservation values and purposes set forth herein.



***O. NCDOT's Rights***

NCDOT, on behalf of itself and its authorized representatives, shall have the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance the conservation values and purposes of the Conservation Easement Area. NCDOT shall further have the right to monitor the results of the mitigation activities in perpetuity and to repair, restore, or cause to be repaired or restored, any damage to the Conservation Easement Area. NCDOT shall have the exclusive right to use the Conservation Easement Area for mitigation or conservation activities that further the conservation values and purposes of the Conservation Easement Area, including, but not limited to, the exclusive right to use, procure, and/or debit any and all credits within the Conservation Easement Area (e.g., the preservation, restoration, enhancement, and creation of streams, wetlands, and riparian buffers; threatened or endangered species conservation measures; and carbon offset).

***7. Ongoing Responsibilities Of Grantor***

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on NCDOT, or in any way to affect any existing obligation of Grantor as owner of the Property and Conservation Easement Area.

***A. Taxes***

Grantor shall be solely responsible for, and pay before delinquency, all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property, by competent authority (collectively, "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall timely furnish NCDOT with satisfactory evidence of payment upon request. If NCDOT is ever required to pay any Taxes on its interest in the Conservation Easement Area, Grantor shall reimburse NCDOT for the same.

***B. Upkeep and Maintenance***

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Property and the Conservation Easement Area, including the maintenance of adequate comprehensive general liability insurance coverage. Further, Grantor shall keep the Property and Conservation Easement Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Except as provided herein, NCDOT shall have no obligation for the upkeep or maintenance of the Property.

***C. Liability and Indemnification***

Grantor agrees to indemnify and hold NCDOT harmless from any and all costs, claims or liability, including, but not limited to: personal injury, accidents, negligence or damage relating to the Property or the Conservation Easement Area, or any claim arising therefrom, including

attorneys' fees, unless due to the negligence, or intentional or willful conduct, of NCDOT or its agents, in which case liability shall be apportioned accordingly.

The Parties acknowledge that NCDOT is an agency and department of the State of North Carolina and has no known ability to give or provide any indemnity to any party whatsoever. Further, NCDOT enjoys the State's sovereign immunity except as expressly waived by the North Carolina Tort Claims Act, Article 31 of Chapter 143 of the General Statutes of North Carolina, and may be liable only as therein provided.

#### **8. Enforcement**

NCDOT shall have the right to conduct regular inspections of the Conservation Easement Area and to prevent any action within or use of the Conservation Easement Area that is inconsistent with the conservation values and purposes of this Conservation Easement and to require the mitigation of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use.

Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Conservation Easement Area, should NCDOT determine that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, NCDOT shall give Grantor written notice of any violation. The written notification will include a demand for a corrective action sufficient to cure the violation; if the violation involves injury to the Conservation Easement Area, NCDOT will demand that the injured/damaged portion of the Conservation Easement Area be repaired. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from NCDOT, pursuant to Paragraph 14, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, NCDOT may bring an action at law or in equity to enforce the terms of this Conservation Easement, to enjoin a violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement, including damages for the loss of conservation values, and to require the restoration of the Conservation Easement Area to the condition that existed prior to any such injury. The Parties agree that a court may issue an injunction or order requiring Grantor to restore the Conservation Easement Area to its condition prior to the violation, as restoration of the Conservation Easement Area may be the only appropriate remedy. If NCDOT, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Conservation Easement Area, NCDOT may pursue its remedies without prior notice to Grantor. NCDOT shall exercise reasonable efforts to notify Grantor and shall, in any event, notify Grantor within two (2) business days after action is taken to explain the action undertaken.

NCDOT has the right to prevent any activity on, or use of, the Conservation Easement Area that is inconsistent with any federal or state environmental permit requirements applicable to the Property or associated with the Conservation Easement Area. NCDOT has the right to require the restoration and/or remediation of any and all conservation values damaged by any

activity or use of the Conservation Easement Area that is inconsistent with any federal or state permit requirements applicable to the Property.

NCDOT's remedies shall be cumulative and shall be in addition to any other rights and remedies available to NCDOT at law or equity. In any case where a court finds that a violation of this Conservation Easement has occurred, Grantor shall reimburse NCDOT for all expenses incurred in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to: court costs, attorneys' fees, damages for losses for environmental or conservation values, any costs of mitigation necessitated by the violation of this Conservation Easement, and any other costs and fees associated with the restoration and/or remediation of the Conservation Easement Area. If legal action is brought by NCDOT and a court finds that no violation has occurred, each party shall bear its own costs.

The failure of NCDOT to discover a violation or to take immediate legal action shall not bar NCDOT from doing so at a later date for that violation or any subsequent violations. Further, no failure on the part of NCDOT to enforce any covenant, condition, or provision hereof shall be a waiver to discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of NCDOT to enforce the same in the event of a subsequent breach or default.

Grantor shall have concurrent jurisdiction and authority for the enforcement of the conditions, restrictions, and prohibitions on the use of the Property and the Conservation Easement Area, and other terms covenants and conditions of this Conservation Easement, as to any person or entity other than NCDOT.

The enforcement authority of NCDOT and Grantor may be exercised jointly and severally by them, in their discretion. Any forbearance, delay, or omission by either NCDOT or Grantor to enforce any covenant or a provision hereof shall not be deemed or construed to be a waiver of any right of enforcement by either Party.

Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against NCDOT for any injury or change in the Property and/or Conservation Easement Area resulting from causes beyond NCDOT's control, including, but not limited to, fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by NCDOT under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property, or harm to the Conservation Easement Area resulting from such causes, in accordance hereunder.

#### **9. Transfer Of Easements**

NCDOT shall have the right to transfer this Conservation Easement, provided the transferee expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, NCDOT shall require that the conservation values and purposes intended to be advanced hereunder shall continue to be carried out.

#### **10. Transfer Of The Property**

Grantor agrees that in the event the Property or any portion thereof is transferred, sold, leased, encumbered, gifted, devised, or otherwise conveyed, Grantor will provide advance notification to NCDOT in writing of the names and addresses of all parties to the transaction at least thirty (30) days prior to the date of the transaction, pursuant to the notification procedure in Paragraph 17.

Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in the Property. Grantor and NCDOT agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof. Failure of Grantor to comply with this Paragraph shall not impair the validity of this Conservation Easement as to successor owners or interest holders in the Property or the Conservation Easement Area or limit the enforceability of this Conservation Easement in any way, nor shall Grantor's failure to comply with this Paragraph constitute a breach under this Conservation Easement.

#### **11. Amendment Of Easements**

This Conservation Easement may be amended, modified, or terminated only by a written, recorded instrument jointly executed by both NCDOT and Grantor. Any such amendment shall be consistent with the conservation values and other purposes of this Conservation Easement and its terms, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. No amendment shall be allowed that is inconsistent with the purposes and values stated herein. Any such amendment shall be duly recorded in the Office of the Yancey County Register of Deeds.

#### **12. Procedure In The Event Of Changed Conditions**

The grant or donation of this Conservation Easement gives rise to a property right immediately vested in NCDOT, with a fair market value equal to the proportionate value that this Conservation Easement bears to the value of the Conservation Easement Area as a whole. This proportionate value shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Conservation Easement Area for conservation purposes by NCDOT (a "Changed Condition"), NCDOT may relinquish or transfer by written instrument all or any portion of this Conservation Easement and the restrictions contained herein. NCDOT may extinguish all or any portion of this Conservation Easement and the restrictions contained herein by appropriate judicial proceeding.

In the event of a Changed Condition resulting in the termination or extinguishment, in whole or in part, of this Conservation Easement, NCDOT shall be entitled to a portion of the Proceeds of any sale, exchange, involuntary conversion of the Property, or any damage award with respect to any proceeding or transfer commenced by or against Grantor, which portion shall be the proportionate value indicated above. "Proceeds" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a

condition to the sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceedings.

### **13. Procedure In The Event Of Condemnation Or Eminent Domain**

Whenever all or part of the Conservation Easement Area is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement (a "Taking"), Grantor shall immediately give notice to NCDOT and shall take all appropriate actions at the time of such Taking or sale to recover the full value of the Taking and all incidental or direct damages resulting from the Taking. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of Grantor's and NCDOT's interests as specified herein. All expenses including attorneys' fees incurred by Grantor and NCDOT in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. NCDOT shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that this Conservation Easement bears to the value of the Conservation Easement Area as a whole. "Proceeds" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceedings, minus Grantor's expenses from such transactions or proceedings.

### **14. Interpretation**

This Conservation Easement shall be construed to promote the purposes of the statutes and regulations of the State of North Carolina, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the conservation values and other purposes sought to be protected herein.

### **15. Severability**

Invalidity of any of the covenants, terms, provisions, or conditions of this Conservation Easement, or any part thereof, by court order or judgment, shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

### **16. Venue And Forum Selection**

The Parties agree that all actions or proceedings arising in connection with this Conservation Easement shall be tried and litigated exclusively in the Superior Court of Wake County, North Carolina. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation with respect to or arising out of this Conservation Easement in any jurisdiction other than that specified in this Paragraph. In the event of litigation, each Party waives any right it may have to assert the doctrine of forum

non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Paragraph, and stipulates that the Superior Court of Wake County, North Carolina shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Conservation Easement. Each Party hereby authorizes and accepts service of process pursuant to N.C.G.S. § 1A-1, Rule 4. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

#### **17. Notices**

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by United States mail, First Class postage pre-paid to ensure delivery to the Parties, respectively, at the following addresses, unless a Party has been notified in writing by the other of a change of address:

##### **To Grantor:**

William and Nadine Boyer  
978 Dam Road  
Burnsville, NC 28714

##### **To NCDOT:**

Natural Environment Section  
Attn: Section Head  
North Carolina Department of Transportation  
1598 Mail Service Center  
Raleigh, North Carolina 27699-1598

##### **AND**

Director of Pre-Construction  
North Carolina Department of Transportation  
1598 Mail Service Center  
Raleigh, North Carolina 27699-1598

In any provision of this Conservation Easement in which Grantor is required to provide advance notice to NCDOT of any activity on the Property, such notice shall be given not less than thirty (30) days prior to the planned commencement of the activity. If the approval of NCDOT is required, such approval shall be deemed withheld unless NCDOT provide(s) to Grantor written notice of approval within thirty (30) days of receipt of said request. If Grantor has received no response after said thirty (30) days, Grantor may send additional written notices to NCDOT requesting a statement of the reasons for disapproval. The failure of NCDOT to respond does not convey or constitute approval for the requested activity.

**18. Grantor's Title Warranty**

Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement ; that the Property and Conservation Easement Area are free and clear of any and all encumbrances, except easements and leases of record as of the date hereto, which Grantor has made known to NCDOT; Grantor will warrant and defend the title against the lawful claims of all persons whomsoever; that both Grantor and NCDOT have legal access to the Property and the Conservation Easement Area; and Grantor covenants that NCDOT shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed. All easements conveyed herein shall run with the land and shall be made part of any transfer of title by Grantor.

**19. Subsequent Liens**

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use the Conservation Easement Area as collateral for subsequent borrowing. Any such liens shall be subordinated to this Conservation Easement.

**20. Subsequent Easements/Restrictions**

The grant of any easements, uses, or use restrictions that might diminish or impair the conservation values of the Conservation Easement Area is prohibited. Any such uses, easements, or restrictions shall be subordinated to this Conservation Easement.

**21. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of a release or threatened release of toxic or hazardous substances or wastes or other contaminants or pollutants on the Property, as such are defined by applicable federal and state law, and hereby promises to defend and indemnify NCDOT against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of toxic or hazardous waste or other contaminants or pollutants caused by an intentional or negligent act, omission, or violation of federal, state or local environmental laws or regulations by Grantor. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in NCDOT, nor shall NCDOT have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

**22. Liberal Interpretation**

Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of N.C.G.S. § 121-34 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the

purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**23. Recording**

NCDOT shall record this instrument and any amendment hereto in a timely fashion with the Office of the Register of Deeds of Yancey County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

**24. Merger**

The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property or Conservation Easement Area.

**25. No Waiver**

Enforcement of this Conservation Easement shall be at the discretion of NCDOT and any forbearance by NCDOT to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by NCDOT of such term or of any subsequent breach of the same or of any other term of this Conservation Easement or of NCDOT's rights. No delay or omission by NCDOT in the exercise of any right or remedy shall be construed as a waiver of any such right or remedy.

**26. Miscellaneous**

This instrument sets forth the entire agreement of the Parties with respect to the Conservation Easement and supersedes all prior or contemporaneous discussions, negotiations, understandings or agreements relating to said Easements.

The burdens of this Conservation Easement shall run with the Property and shall be enforceable against Grantor and all future parties who have an interest in the Property in perpetuity.

**TO HAVE AND TO HOLD** this Conservation Easement unto NCDOT, its successors and assigns, forever, this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto.

**IN WITNESS WHEREOF**, Grantor and NCDOT, intending to legally bind each other, have set their hands on the date first written above.



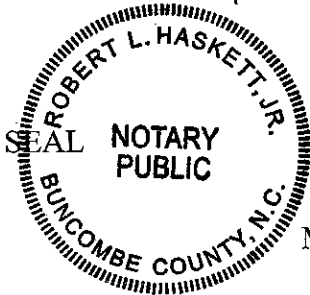
GRANTOR:

William R. Boyer (Seal)  
William R. Boyer

Nadine E. Boyer (Seal)  
Nadine E. Boyer

NORTH CAROLINA  
Buncombe COUNTY

I, Robert L. Haskett, Jr., a Notary Public of Buncombe County, North Carolina, do hereby certify that William R. Boyer and wife Nadine E. Boyer personally appeared before me this day and executed the foregoing instrument. Witness my hand and official stamp or seal this 25<sup>th</sup> day of July, 2014.



Robert L. Haskett, Jr.  
Notary Public Signature

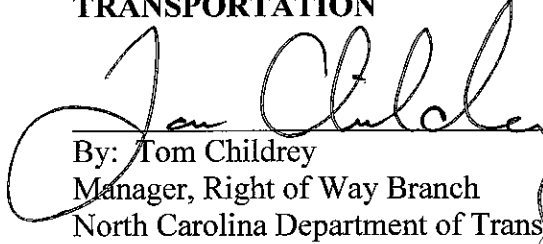
ROBERT L. HASKETT, JR.  
Printed Name of Notary Public

My commission expires: December 06, 2017

Unofficial

**GRANTEE:**

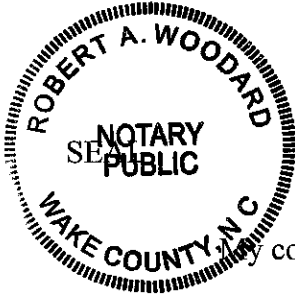
**NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION**

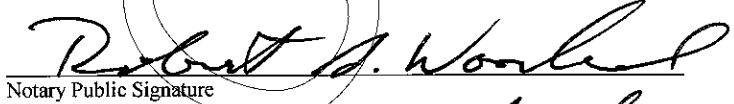
 (SEAL)  
By: Tom Childrey  
Manager, Right of Way Branch  
North Carolina Department of Transportation

NORTH CAROLINA  
WAKE COUNTY

I, Robert A. Woodard, a Notary Public of WAKE County, North Carolina, do hereby certify that Tom Childrey personally came before me this day and acknowledged that he is the Manager of the Right of Way Branch for the North Carolina Department of Transportation, an agency of the State of North Carolina, and that by authority duly given, he executed the foregoing instrument.

Witness my hand and official stamp or seal this 12 day of August, 2014.



  
Notary Public Signature

Robert A. Woodard  
Printed Name of Notary Public

My commission expires:

2/4/18

Unofficial

**EXHIBIT A**

**CONSERVATION EASEMENT AREA**

Conservation Easement Area - (0.563 acres, more or less) -

Said conservation easement area consisting of 0.563 acres, more or less, over and upon a portion of those certain 15.645 acres owned in fee simple by William R. Boyer and Nadine E. Boyer and described in Deed Book 527, Page 297 of the Yancey County Registry, and located in Prices Creek Township, Yancey County, North Carolina, and being described according to a plat or survey dated May 2, 2014 and captioned "Boundary Survey of Conservation Easements for North Carolina Department of Transportation" prepared by TGS Engineers of Shelby, North Carolina and recorded contemporaneously herewith at Book 4, Page 81 of the of the Yancey County Registry.